

Court of Appeals, State of Michigan

ORDER

People of MI v Kwame Kilpatrick

Docket No. 296559

LC No. 08-010496-01; 08-010777-01

Karen M. Fort Hood
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The motion for reconsideration is DENIED.

On the Court's own motion, MCR 7.205(D)(2), a stay of proceedings is GRANTED pending a complete review of the transcripts and pleadings in this case.

Murray, J. (*concurring in part, dissenting in part*): I concur in the decision to deny defendant's motion for reconsideration, and also join Judge Fort Hood's statement but only as it regards the deficiencies in defendant's motion for reconsideration.

However, I respectfully dissent from this Court's *sua sponte* decision to stay the lower court proceedings. Defendant has failed to argue the full requisite criteria for the granting of a stay, see *Comm'r of Ins v Arcilio*, 221 Mich App 54, 77-78; 561 NW2d 412 (1997), and has only argued that the trial court erred in several respects. However, other than raising one *potential* legal error regarding use of Mrs. Kilpatrick's personal funds to pay towards the restitution order, see MCL 557.21(1), an issue which was presented to this Court last year in a prior application that was denied, see *People v Kilpatrick*, Docket No. 292273, defendant has not in my view raised any other legal errors committed by the trial court that would warrant a stay.

Fort Hood, P.J., concurs in the issuance of a stay and states as follows: For reasons of judicial economy and conservation of scarce judicial resources in both this Court and the trial court, I voted to grant defendant's motion for stay. Without the transcripts underlying the trial court's decision to order restitution, this Court's ability to assess the application was severely hampered and warranted a stay to obtain those transcripts. In my view, defendant has not demonstrated a palpable error to demonstrate that the Court's majority erred in denying the request for a stay. However, in light of the fact that the

trial court may engage in additional hearings that could be rendered moot by a decision from this Court, I continue to hold the view that a stay should be granted for reasons of judicial economy.

I write separately to express my dismay at the abject nature of the pleadings filed on behalf of defendant. This Court is an error correcting court, *Burns v Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002), and we are bound by the proceedings held in the lower court. Therefore, the litigants are required to present the transcripts of any proceedings and any order entered by the lower court for appellate review. MCR 7.210(A), (B); *Band v Livonia Associates*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989). Our review is limited to the record created in the lower court. See MCR 7.210(A)(1). The motion and brief filed by defendant requesting reconsideration of a stay does not contain any citation to legal authority or the lower court record, contrary to the court rules, but rather contains a narrative one-sided view of the proceedings. Indeed, the court rules provide that pleadings that do not conform to the court rules may be stricken. MCR 7.211(A)(3); MCR 7.212(C); MCR 7.212(I).

In this case, defendant's filing is unconscionable and does not merit serious consideration in light of the nature of the filing. By way of example, the brief attacks the trial court for rendering improper decisions that allegedly cause defendant to be vilified. The proper procedure for challenging the trial court is to file a motion for disqualification, to seek further review from the chief judge, and to file a request for appellate review if the requests are denied. See MCR 2.003. We have not been provided any documentation to demonstrate that defendant complied with any of these provisions. Accordingly, this challenge as raised by the defense is mere rhetoric that does not warrant any time or consideration, let alone appellate relief. Nonetheless, for reasons of judicial economy, I would not strike defendant's brief. However, defendant is now placed on notice that any future filings must comport with the court rules, must mirror the ethical standards required of this profession, and must apprise this Court of both the favorable and unfavorable facts. Consequently, although the instant pleadings are grossly noncompliant and inappropriate, in light of the time constraints, I join in the issuance of a stay.

Finally, I would sua sponte impose a gag order in this case. The appropriate forum for litigation of issues is in the courtroom, not in the media.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 25 2010

Date

Sandra Schultz Mengel
Chief Clerk